

### III. REMARKS

Claims 1, 4-7, 11-12, and 19 are pending in this application. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1, 4-5, 7, 11 and 19 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brichta (U.S. Patent No. 5,864,483), hereafter "Brichta," in view of McKnight (U.S. Patent No. 6,557,035), hereafter "McKnight," and further in view of Sweet *et al.* (U.S. Patent No. 6,836,800), hereafter "Sweet." Claim 6 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brichta, in view of McKnight and Sweet, in further view of Baumann *et al.* (U.S. Patent No. 5,469,148), hereafter "Baumann." Claim 12 has been indicated as containing allowable subject matter. Applicants gratefully appreciate the indication of allowable subject matter.

Applicants respectfully object to the Office's use of McKnight as a reference in its rejection under 35 U.S.C. §103(a). Specifically, given the filing date of the present application of April 11, 2000; the fact that McKnight issued on April, 29, 2003, after the filing of the present application; and the fact that McKnight was not published prior to issuance, the McKnight reference constitutes prior art only under 35 U.S.C. §102(e). Furthermore, Applicants assert that McKnight (U.S. Patent No. 6,016,494) was owned by, and Application (09/547,273) was subject to an obligation of assignment to, International Business Machines Corporation of Armonk, New York at the time the invention of Application 09/547,273 was made. For the above stated

09/547,273

Page 7 of 9

**BEST AVAILABLE COPY**

reasons, the above-referenced 35 U.S.C. §103(a) rejections of claims 1, 4-7, 11 and 19 based on the reference of McKnight are improper and should be withdrawn. Accordingly, Applicants submit that claims 1, 4-7, 11 and 19 are allowable and respectfully requests that the Office withdraw its rejections.

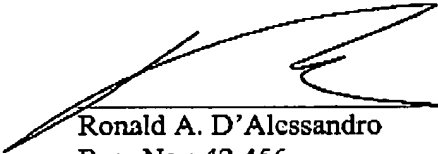
#### IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above remarks, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Date: December 5, 2005



Ronald A. D'Alessandro  
Reg. No.: 42,456

Hoffman, Warnick & D'Alessandro LLC  
75 State Street, 14<sup>th</sup> Floor  
Albany, New York 12207  
(518) 449-0044  
(518) 449-0047 (fax)

RAD/hew